UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1047
5 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1047th MEETING

Held at Headquarters, New York,
on Tuesday, 2 April 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. WAKO (Vice-Chairman)

later: Mr. POCAR (Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6, 11 and 12)

1. At the invitation of the Chairman, Mr. Halliday, Mr. Beamish, Mr. Stock, Mrs. Evans and Mr. Dykes took places at the Committee table.

2. The CHAIRMAN invited members to resume consideration of section II of the list of issues, which had been held over from the preceding meeting.

3. Mr. PRADO VALLEJO inquired whether the United Kingdom was making any effort to resolve its dispute with Argentina regarding the Falkland (Malvinas) Islands.

4. Mr. SADI noted that the right to self-determination in the United Kingdom had been explicitly defined in paragraph 18 of the United Kingdom's report (CCPR/C/58/Add.6). He wished to know whether the United Kingdom would be prepared to use the same formulation with respect to its dependent territories, including Hong Kong.

5. Mr. HALLIDAY (United Kingdom) said that his country had no intention of introducing proportional representation for elections to the Parliament of the United Kingdom. He believed that the Covenant allowed Governments to choose the methods they deemed most suitable for elections to their national parliaments. While it was true that the system used in the United Kingdom might not produce results in terms of which the number of members of Parliament directly reflected the number of votes cast, it was also true that elections held under the proportional representation system tended to result in no overall majority for any single party. The latter situation gave rise to the need to form coalitions in order to implement various programmes, policies and activities which had not necessarily been put before the electorate during the election. People who favoured the system in use in the United Kingdom believed that the system of proportional representation could give minority parties a disproportionate influence in Parliament and create a risk greater than that which existed under the current arrangements.

6. There was full, free and open debate on the issue of proportional representation in the United Kingdom. At various times, different parties had put forward proposals on the subject, and there was ample opportunity for such proposals to be debated in Parliament.

7. Mr. BEAMISH (United Kingdom) said that a number of questions had been asked regarding the interrelationship between the Basic Law of Hong Kong Special Administrative Region, the Sino-British Joint Declaration on the Question of Hong Kong and the Covenant. Article 19 of the Basic Law provided that the Hong Kong Special Administrative Region would be vested with independent judicial power,

(Mr. Beamish, United Kingdom)

including that of final adjudication. The second paragraph of article 158 of the Basic Law stated that "the Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region". The majority of the provisions of the Basic Law fell into that category. The third paragraph of article 158 set out the specific circumstances in which Hong Kong courts must seek an interpretation from the Standing Committee concerning affairs which were the responsibility of the Central People's Government or which concerned the relationship between the Central Authorities and the Region. The Basic Law applied both to the Central Authorities and to the Special Administrative Region and the courts of the Special Administrative Region could not be expected to have exclusive competence to interpret the provisions concerning the relationship between the Central Authorities and the Special Administrative Region.

8. There was no danger that the phrase "as applied to Hong Kong", contained in article 39 of the Basic Law, would result in an imperfect implementation of the Covenant in Hong Kong. Every effort would be made to remedy any inconsistencies which might arise between the application of the Covenant in law and its implementation in practice. The United Kingdom would continue to keep under review the possibility of lifting any reservations pertaining to Hong Kong. If a decision was taken to remove a particular reservation, the United Kingdom would have to consider the implications for the Joint Declaration and the need to ensure the continuity of the relevant obligations after 1997.

9. With regard to article 20 of the Basic Law, he said that it was not appropriate for Her Majesty's Government to comment on the drafting history or the interpretation of an article in a Chinese law unless there was some concern that that article was not in keeping with the Joint Declaration. If the Committee was interested in article 20 in the context of the entrenchment of the Hong Kong Bill of Rights in the legislation of the Special Administrative Region, it should refer to the second paragraph of annex II (II), which dealt with the passage of government bills by a simple majority vote.

10. In the light of the promulgation of the Basic Law of the Hong Kong Special Administrative Region by the National People's Congress, the Legislative Council had urged the Chinese and British Governments to take into account the interests of the people of Hong Kong, and to help Hong Kong to surmount its problems, both before and after 1997. It had also urged the National People's Congress to amend, at a suitable time, the relevant clauses of the Basic Law according to the recommendations contained in the comments on the Basic Law in order to preserve Hong Kong's prosperity and stability. The Hong Kong Government had issued a statement to the effect that the drafting of the Basic Law was a matter for the Chinese authorities and that its concern was to ensure consistency with the Joint Declaration. The Hong Kong Government had welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process, and had pointed out that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process. The Hong Kong Government

(Mr. Beamish, United Kingdom)

had noted that it would not be appropriate to comment on the resignation or expulsion of certain members of the Basic Law Drafting Committee or Consultative Committee.

11. A question had been asked regarding that part of the territory of Hong Kong which was not subject to the lease which expired in 1997. Under the Treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong Island, the southern part of the Kowloon Peninsula and Stonecutter's Island had been leased to the British Government in perpetuity. The rest of the territory of Hong Kong, comprising 92 per cent of the total land area, had been leased to Britain for 99 years, from 1 July 1898, under a further convention signed at Peking in that year. The leased area, consisting of the areas north of Kowloon up to the Shenzhen River, and 235 adjacent islands, was known as the New Territories.

12. The Chinese Government had consistently taken the view that the whole of Hong Kong was Chinese territory. For many years, the Chinese position had been that the treaties relating to Hong Kong were unequal and that the question should be settled peacefully through negotiation when the time was ripe. Over the years China had made clear its position that the settlement of the question of Hong Kong was a matter of China's sovereign right. The expiry of the New Territories' lease on 30 June 1997 had made it necessary to deal with the question of Hong Kong's future as soon as possible after China's emergence from the Cultural Revolution. It was clear that the remaining 8 per cent of Hong Kong's land area would not be viable without the New Territories, which contained most of the territory's agriculture and industry, its power stations and its airport and container port. Moreover, by the late 1970s, concern about the future of Hong Kong, both locally and among foreign visitors, had begun to grow. The inability of the Hong Kong Government to grant new land leases in the New Territories extending beyond 1997 had been a particular problem.

13. The United Kingdom's views on self-determination were contained in its report. The extent to which and the manner in which self-determination was exercised in any particular territory depended on the particular circumstances and conditions in that territory. The people of the Falkland Islands, for example, expressed their views in regular elections and there was no doubt that their wish was to remain under British sovereignty.

14. Mr. Prado Vallejo had asked whether the United Kingdom was taking any steps to resolve its dispute with Argentina over the Falkland Islands. In 1990, when the United Kingdom and Argentina had agreed on the resumption of full diplomatic relations, they had also agreed that the Falklands issue should be discussed under a "sovereignty umbrella". Since that time, the British and Argentine Governments had been able to agree on a number of issues relating to activities in the Falkland Islands and in the South Atlantic region in general. The "sovereignty umbrella" had promoted a degree of practical and effective cooperation between the Governments.

(Mr. Beamish, United Kingdom)

15. A question had been raised regarding apparent inconsistencies in the Constitution of the Cayman Islands. Under the Cayman Islands Royal Instructions, the Governor could not assent to any bill the provisions of which appeared to be inconsistent with obligations imposed by treaty without the prior instructions of Her Majesty through a Secretary of State. It followed that, if the Governor deemed a bill to be inconsistent with a treaty, he was obliged, under section 39 (2) of the Constitution, to seek instructions on the matter from London. The question of consistency of the bill with the treaty would be examined and, if the bill was found to be inconsistent with treaty obligations, assent would not be given.

16. The disallowance procedure, set forth in section 41 of the Constitution of the Cayman Islands, provided that any law to which the Governor had given his consent could be disallowed by Her Majesty through a Secretary of State. Once the law had been disallowed, notice to that effect was published and the law was annulled with effect from the date of publication. One ground on which a law might be disallowed would be that it was inconsistent with a treaty obligation. Those formal procedures were applied very rarely, since the greatest care was taken to ensure that bills were compatible with treaty obligations.

17. The United Kingdom rejected most firmly any suggestion that the use of force by the allied coalition in the Persian Gulf conflict had been excessive. The allied side had endeavoured to keep civilian casualities to a minimum and to stay strictly within the confines of the laws and customs of war. The United Kingdom's forces had been deployed alongside those of other members of the international coalition in response to an appeal made by countries of the region for assistance in the defence of their territory following Iraq's invasion of Kuwait. Such assistance had been rendered in accordance with the Charter of the United Nations.

18. There was a great need for humanitarian assistance to the peoples of the region, especially the peoples of Kuwait and Iraq. The extent to which humanitarian assistance could be provided to the people of Iraq was limited by the internal situation in that country. The United Kingdom had played a full and positive role in the deliberations of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait. The decision taken by that Committee on 22 March 1991 should ensure that humanitarian assistance reached those in greatest need in all parts of Iraq.

19. Mr. STOCK (United Kingdom) said that the establishment of functional constituencies in Hong Kong had been the first step taken towards the progressive development of representative government at the central level in Hong Kong. The functional constituencies partly replaced the Governor's appointment of representatives of major professional, social and economic groups, and they appeared to have worked successfully. He drew attention to article 68 of the Basic Law, which stated that "the ultimate aim is the election of all the members of the Legislative Council by universal suffrage". Annex II (III) of the Basic Law would allow for the phasing out of the functional constituencies after the third term of the legislature of the Special Administrative Region.

20. Mr. EL-SHAFEI said that he had requested the delegation of the United Kingdom to explain the implication of article 20 of the Basic Law in the context of the Committee's efforts to understand the interrelationship between the Basic Law, the Joint Declaration and the Hong Kong Bill of Rights. He inquired whether additional powers would be given to the legislature or the executive in Hong Kong after 1997 and, if so, in what areas such powers could be granted.

21. Mr. BEAMISH (United Kingdom) said that article 20 was an intentionally permissive formulation, and it would be incorrect for his delegation to make any further comments on that article, since such comments could be only of a speculative nature.

State of emergency (article 4 of the Covenant) (section III of the list of issues)

22. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of the United Kingdom, namely: the provision of information, with reference to paragraphs 57 to 60 of the report, concerning the Government's current views on the problem of extended detention.

23. Mr. HALLIDAY (United Kingdom) said that the power to arrest a person suspected of terrorist activities and to detain the suspect for a maximum period of seven days was not in any sense arbitrary. In practice, the suspect was very rarely detained for the full seven days; more often, detention lasted no more than five days. Detention had to be justified by the need to collect evidence which would be usable in an ordinary criminal case.

24. With respect for the need for the power, account must be taken of the terrorist threat which, regrettably, continued to exist. Between 1 January 1978 and 31 December 1990, 1,089 people had been killed, of whom 615 had been civilians, as a result of terrorist violence in connection with the affairs of Northern Ireland. During the same period, 12,652 people had been injured, of whom more than 7,300 had been civilians. The figures for the whole period during which such activities had been going on were of course very much larger. In 1990, more terrorist acts had been reported in the United Kingdom than at any time since 1975.

25. One of the features of terrorist activities was the extreme difficulty in obtaining evidence, not least because of the fear which terrorist activities engendered in people who might otherwise be willing to help. Time was needed to collect, examine and analyse forensic evidence and to pursue leads and bits of information which might result in the establishment of a prima facie criminal case. That required patience in questioning and application in following up inquiries which might be conducted in other parts of the country or in other countries and involve other agencies and police forces. It was for that reason that the relatively small additional time was required.

26. The possibility of incorporating some form of judicial procedure into such arrangements had been seriously considered but that involved many difficulties. Often, evidence giving rise to suspicion could not be disclosed because of the danger which disclosure would create for the source of the information. That

(Mr. Halliday, United Kingdom)

introduced into the process an element of non-disclosure, which was incompatible with a truly justiciable process during which all evidence would be made available to the suspect, who might then be in a position to make some form of appeal. Thus, any review process during the period of detention would have to be executive rather than judicial, even if a judicial figure was asked to take on the task.

27. Safeguards existed to protect those who had been arrested and were being questioned under the powers, which in any event were subject to regular parliamentary scrutiny and debate. There was an annual parliamentary review to consider whether the powers as a whole should be renewed, and on four separate occasions they had been examined in minute detail. There was also an annual independent scrutiny of and report on the way the powers operated. A significant number of ordinary criminal charges arose from arrests and questioning authorized under the powers. Safeguards for individuals had been improved: a new provision had been introduced requiring scrutiny of the grounds for detention during the first 48 hours by a senior police officer not directly involved in the case. After the first 48 hours any extension of detention had to be authorized by the Home Secretary personally, and when applications were made for such extension specific reasons had to be given, along with an indication of what was expected to result from further questioning. Normally extension of detention was for three days; seldom was it for longer.

28. Mr. PRADO VALLEJO said that it was his understanding that under the Immigration Act, 1971, it was possible to dispense with the protection which the law would normally provide to suspects, and to detain people indefinitely without trial and with no right of appeal. If that were so it would be a matter of some concern, and consideration would have to be given to whether the practice was compatible with the provisions of article 9 of the Covenant.

29. Ms. CHANET welcomed the fact that the United Kingdom delegation had spoken of more encouraging prospects for Northern Ireland, especially in light of the recent decision to hold round-table talks, which, in her view, would be the best way of dealing with terrorism. However, Northern Ireland was still under a state of emergency, and it was for the Committee to consider whether the derogations entered under article 4 of the Covenant accurately reflected the actual situation. The derogation in respect of extension of detention had been made solely with regard to article 9 (3) of the Covenant, and she wondered if there were any other of its provisions for which derogation was necessary with regard to Northern Ireland.

30. She mentioned article 14 (3) (g) regarding the guarantee not to be compelled to testify against oneself, and asked how legislation applicable in Northern Ireland, especially the Northern Ireland (Emergency Provisions) Acts of 1978 and 1987, with respect to the admissibility of evidence was to be reconciled with the right of the accused to remain silent. There had not been any derogation of obligations under article 14 (3) (g), and it was important for the Committee to understand how the relevant emergency provisions were applied in Northern Ireland. If there were a presumption of guilt, it would be contrary to the Covenant, but if it were a matter of simple admissibility which made it possible for a court to

(Ms. Chanet)

retain its authority to decide, there might be no need for derogation. She would welcome clarification of how the procedures referred to in paragraph 114 of the report were applied in practice.

31. The report stated that the application of conditional release in Northern Ireland was ruled out because of the fact of terrorism, and she would welcome assistance in interpreting that reference in view of the possibility that it constituted a derogation of article 10 (3) of the Covenant, which stated that the essential aim of the treatment of prisoners should be their reformation and social rehabilitation.

32. Mr. AGUILAR noted that there were a number of laws of an emergency nature in the United Kingdom which involved derogations of articles of the Covenant, and he observed that there seemed to be a policy on the part of the Government of the United Kingdom of maintaining derogations of human rights obligations in perpetuity. In November 1989 the Home Secretary had told the United Kingdom Parliament that the derogation under article 4 of the Covenant would remain in place for as long as circumstances required. Clarification was sought as to what specific powers the United Kingdom Parliament possessed in its regular reviewing of emergency legislation, for the report suggested that it was the emergency legislation itself that set the rules, rather than that Parliament was in a position to take decisions regarding application of that legislation. He expressed concern about the reversal of the initial onus of proof, referred to in paragraph 114 (c) of the report, which replaced the presumption of innocence with the presumption of guilt, and sought clarification as to those cases in which refusal to testify against oneself could be considered virtually tantamount to a confession. If use of the Immigration Act, 1971, to detain Iraqis and Palestinians on grounds of an alleged threat to national security constituted a derogation of article 9 of the Covenant, no such derogation had been communicated to the Committee through the Secretary-General.

33. As far as terrorism legislation was concerned, there had been derogation of obligations under article 9 (3) of the Covenant, but to judge from what had been said by the Home Secretary there was also implicit derogation of other articles, notably article 14 (3) and a number of its subparagraphs. There had been several occasions when that article had not been applied, and the absence of any explicit derogation of it was tantamount to a violation of its provisions.

34. Dealing with the application of article 4 of the Covenant in the case of Hong Kong, the report referred to a number of emergency regulations, including Emergency (Principal) Regulations specifying procedures to be followed in particular areas of concern when the Emergency Regulations Ordinance had been brought into effect. Paragraph 30 (d) (vi) referred to "miscellaneous provisions", without indicating their nature or what rights could be derogated under them. Likewise, the reference in paragraph 30 (d) (vii) to "specific offences and penalties" failed to indicate the nature of the offences referred to and how they might be punished. In paragraph 29 of the same section of the report, it was stated that in the context of consideration of a local bill of rights, thought was being given to the

(Mr. Aguilar)

inclusion of a clause that would explicitly preclude the introduction of any legislation that would derogate from the International Covenants, and he wondered whether that legislation had been promulgated and if so whether it applied in cases of emergency.

35. Mr. Wako (Vice-Chairman) took the Chair.

36. Mr. MYULLERSON expressed concern about derogation in respect of Northern Ireland from the obligations under article 9 of the Covenant, because there had been cases connected with Northern Ireland in which people - notably the Guildford Four and the Birmingham Six - had been sentenced to long terms of imprisonment under terrorism legislation but had later had those sentences quashed. Such cases indicated that derogation was fraught with the danger that innocent people might be convicted and sentenced while genuine terrorists remained at liberty. Even in cases connected with terrorism it was of the utmost importance strictly to respect the requirements of due process.

37. Mr. DIMITRIJEVIĆ noting that article 18 (4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China provided for the possibility of the Standing Committee of the National People's Congress deciding that the Region was in a state of emergency by reason of "turmoil" which endangered national unity or security and was beyond the control of the government of the Region, expressed concern that the wording adopted in the Basic Law was not as strict as that found in article 4 of the Covenant, which referred to a public emergency which threatened the life of the nation and the existence of which was officially proclaimed. The statement in article 18 (4) that the central Government of the People's Republic of China might issue an order applying the relevant national laws in the Hong Kong Special Administrative Region was cryptic; it was not clear what it meant and whether it might include the curtailment of certain rights. The provision in question might be interpreted as authorizing derogations of rights in situations that were not as serious as those envisaged in article 4 of the Covenant. Moreover, the Basic Law made no provision for notification of any such state of emergency to the States parties through the Secretary-General of the United Nations, as required by article 4 of the Covenant. The Committee should appeal to the Government of the United Kingdom to see to it that article 4 would be respected in its entirety by the Government of the People's Republic of China after 1 July 1997.

38. Mr. EL-SHAFEI said that he, too, was concerned about the power given to the Standing Committee of the National People's Congress of the People's Republic of China to declare a state of emergency in the Hong Kong Special Administrative Region. He asked for a definition of "turmoil", and said he feared that any public manifestation of the popular will in Hong Kong could be used to justify the imposition of a state of emergency. He had a similar worry about the definition of the phrase "national unity or security", also used in article 18 (4) of the Basic Law. Article 4 of the Covenant imposed limitations on the powers of derogation, and he was concerned to know whether the derogation from statutory laws in Hong Kong corresponded to the derogations prescribed by article 4, and whether the

(Mr. El-Shafei)

relevant national laws referred to in article 18 (4) were applicable in a state of emergency in Hong Kong, and corresponded to the provisions of the Covenant. Article 14 of the Basic Law referred to possible intervention by military forces, and he sought an explanation of the extent to which those military forces could be used in cases of "turmoil". The Committee needed assurances concerning the limitation of the power to declare a state of emergency in the Hong Kong Special Administrative Region.

39. Mr. SADI said that in the United Kingdom the Home Secretary enjoyed sweeping powers under the Immigration Act, 1971, to detain foreigners indefinitely without trial and with no right of appeal. In order to continue to enjoy those powers, the Government of the United Kingdom should make an express derogation from its obligations under articles 9 and 13 of the Covenant, and he asked if such derogation was under consideration.

40. Mr. LALLAH said that, with regard to Hong Kong, he had no doubt that the Government of the United Kingdom and the Committee shared a common desire, which was to ensure that the provisions of the Covenant would continue in force. He would therefore simply associate himself with the concerns regarding Hong Kong expressed by Mr. Dimitrijević and other members of the Committee.

41. With regard to Northern Ireland, the United Kingdom position that the situation required extraordinary powers was understandable; it was nevertheless important to ensure that certain minimum standards were maintained. The derogations from article 4 of the Covenant could be regarded as permissible only to the extent that they were required by the exigencies of the situation. However, in view of the considerable number of people arrested and detained beyond the seven-day period, he wondered what safeguards had been established against abuse of that lengthy period of detention, in particular, for the purpose of detecting and punishing ordinary offences.

42. It was his understanding that the European Court of Human Rights had ruled against the United Kingdom in the case of Brogan and Others. He asked the representative of the United Kingdom to comment on that ruling and on how his Government intended to comply with the European Convention as well as the International Covenant. In that connection, he noted that the Statutory Commission on Human Rights had held that the Northern Ireland (Emergency Provisions) Act should be revised and the seven-day detention period dropped. What seemed important with respect to the cases under discussion was the reasonableness of the derogation from article 9 (3) and the question of judicial control. There were also serious concerns relating to possible violations of article 14 (2) and (3) (g), although article 14 was not one of those in respect of which any derogation had been made. There seemed no reason why Northern Ireland could not have been treated like England and Wales in that respect.

43. He was in complete sympathy with the view that terrorism must be prevented, but it must be borne in mind that terrorism aroused enormous social prejudice from which persons accused of terrorism sometimes suffered. It was all the more

(Mr. Lallah)

desirable, in view of the seriousness of the offences involved, that care should be taken to ensure that accused persons enjoyed at least the minimum guarantees of human rights.

44. Mr. MAVROMMATIS said that his concerns related not to article 4 of the Covenant but to articles 14 and 9. He shared the doubts of Ms. Chanet, Mr. Lallah and Mr. El-Shafei, with regard to the degree to which the legislation to which they had referred complied with article 14. He did not wish to be taken as casting doubt on the seriousness of the situation in Northern Ireland but it seemed clear that it must be kept under constant review from the point of view of human rights.

45. Mr. HALLIDAY (United Kingdom) said he wished to make clear that the Government's powers to deport under the Immigration Act applied only to a specific category of persons and that the persons to whom it was applied had the right of appeal with the exception of those whose deportation was ordered specifically on grounds of national security. Moreover, detention was avoided wherever possible, could only occur in cases where grounds for deportation existed and could continue only as long as the grounds for deportation continued to exist. Nor did detention involve denial of access to the courts, which continued to exist and had been made use of. It was therefore his Government's position that its detention powers under the Immigration Act were consistent with the Covenant. In the cases to which reference had been made which involved Iraqis and Palestinians, deportation action had been taken in connection with a very specific threat and the dangers flowing from it. It should also be pointed out that not all those deported had been previously detained.

46. With respect to parole in Northern Ireland, he stressed that the fact that a system of parole was available in the United Kingdom but not in Northern Ireland had to do with the difficulty of operating such a parole system in Northern Ireland. The differences between Northern Ireland and in the rest of the United Kingdom in respect of parole would be narrowed when the Criminal Justice Act currently before Parliament came into effect.

47. With respect to the Birmingham Six, it was important to remember that, the cases to which members of the Committee had referred were different in that they had been prosecuted under anti-terrorist legislation. In cases such as that of the Birmingham Six there was provision for both appeal and compensation.

48. His colleague Mrs. Evans would provide the Committee with further information concerning the Brogan case.

49. Mrs. EVANS (United Kingdom) said that, in the case referred to, the European Court had found no breach of article 5, paragraph 1, including paragraph 1 (c) or of article 5, paragraph 4 of the European Convention, which corresponded to Article 9 of the International Covenant. The Court had found that there had been a violation of article 5, paragraph 3 and article 5, paragraph 5, but it had made clear its understanding of the difficult situation the United Kingdom Government faced in Northern Ireland, and had not held that the legislation under

(Mrs. Evans, United Kingdom)

consideration was either unnecessary or undesirable. It should be pointed out that although the Court had the right to grant compensation, it had not done so in the case under consideration. Nor had the Committee of Ministers of the Council of Europe, to which the case had been referred as a matter of course, seen fit to pursue the matter any further.

50. She added that statutory rights existed in both the rest of the United Kingdom and Northern Ireland giving detained persons access to lawyers and concerning the provision of information to families of detainees, although the exercise of those rights could be delayed for 48 hours in very clearly specified circumstances.

51. Mr. Pocar resumed the Chair.

52. Mr. STOCK (United Kingdom), returning to the question of Hong Kong, reminded Mr. Dimitrijević that the obligations arising from the Covenant were enshrined in the Sino-British Joint Declaration and in article 39 of the Basic Law.

53. In the application of the Basic Law, including article 18, there was an international obligation, as reflected in article 39, and it was the expectation of the United Kingdom that that obligation should prevail. Article 11 of the Basic Law provided that no law could be enacted which would contravene the Basic Law, and that included article 39 which required that the provisions of the Covenant, should be implemented through the laws of Hong Kong.

54. As to the situation with regard to emerging regulations, clause 5 of the draft Bill of Rights dealt with public emergencies and, in effect, reproduced article 4 of the Covenant, which permitted derogations in time of public emergency. If any laws currently in force were to infringe the Covenant, they would be amended or repealed pursuant to the Bill of Rights. In order to resolve any inconsistency between the Covenant and any Hong Kong regulations, a comprehensive review of all ordinances in force would be carried out with the aim of ensuring strict respect for the Bill of Rights.

55. Mr. DYKES (United Kingdom) said that Hong Kong's emergency laws had first attracted the attention of the Committee in 1988, at which time the Committee had been informed that no derogations permitted under the covenant were to be found in the principal ordinance and the regulations made thereunder. The principal ordinance, which had been enacted in 1922, gave the Government the power to make regulations in a variety of areas. In fact, only 10 sets of regulations had been made, 9 of them in connection with disturbances occurring in 1967. The regulations had since then remained dormant.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section IV of the list of issues)

56. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of the United Kingdom, namely: (a) with reference to paragraph 56 of the report, information on any further consideration by the Government to

(The Chairman)

reviewing the remaining discriminatory provisions under the Immigration Rules, particularly those discriminating between male and female students from abroad and wives and husbands of deportees; (b) with reference to paragraph 27 of the report, whether members of ethnic minority groups facing criminal charges were informed systematically of the relative advantages or drawbacks of opting for a trial before a jury or pleading guilty; and (c) with reference to paragraph 2 of the report relating to the States of Jersey, whether the planned legislation to ensure the equal treatment of males and females in matters of succession had been enacted.

57. Mr. HALLIDAY (United Kingdom) explained that the provisions of the immigration laws prescribing different treatment on the basis of gender were very few in number and very limited in scope. The Government was, however, faced with a difficult choice between doing away with gender discrimination in a manner that would bring hardship to categories of people who had previously not been discriminated against and weakening its control over immigration, thereby increasing pressure on the domestic labour market. The power to deport the wife of a man subject to a deportation order had not been used since 1983.

58. Mr. ANDO asked whether the Convention on the Elimination of All Forms of Discrimination against Women, which the United Kingdom had ratified, would apply to Hong Kong, in particular with respect to equal pay for equal work and family property and inheritance questions. The Basic Law had little to say on the subject, although article 25 guaranteed equality for everyone before the law. Given the tradition and customs of Hong Kong society, however, he wondered if more information could be given.

59. Mr. WENNERGREN asked why prisoners had no right to vote in the United Kingdom. The right to vote was a civic right of paramount imortance, and he wondered if it was denied to prisoners because they were second-class citizens, or because of their need for rehabilitation or because it was considered a reasonable retribution. If the prohibition on voting did not apply to individuals held in pre-trial detention he wondered why not.

60. Mr. FODOR, noting the statement in paragraph 29 of the report to the effect that the police, the courts, prosecutors and the prison system in England and Wales needed a clearly stated policy on race issues, asked what the main features of such a policy would be and why the reference was only to England and Wales. Information was given in the report only on the prison service, and he wondered what measures were taken in other areas. He asked what the justification was for the extensive privileges enjoyed by the Church of England. He wondered whether distinction between the Church of England and other churches was objective and reasonable, and asked what obstacles existed to a total separation of church and State.

61. Turning to the activities of the Commission for Racial Equality, he wondered why less than 20 per cent of the cases of alleged discrimination received assistance from the Commission and why so few of the cases supported by the Commission were successful.

(Mr. Fodor)

62. It was clear from paragraph 49 of the report that the intention of the Government in enacting the Fair Employment (Northern Ireland) Act and establishing the Fair Employment Tribunal was to strengthen the existing law against religious discrimination. It was not clear to him, however, why the establishment of a special Tribunal had been necessary, and why the ordinary courts of Northern Ireland would not be able to adjudicate such cases. He wished to know whether the Fair Employment Tribunal had a jurisdiction similar to that of industrial tribunals in England and Wales, or whether it dealt only with cases involving religious discrimination. He also wondered how the Tribunal could enforce the findings of the Fair Employment Commission. The Act required employers to monitor the religious composition of their workforce, and while appreciating the objective of the Act, he wondered how that was done in practice. He wished to know whether job applicants were required to state their religious affiliation and whether there was an optimal ratio of Protestants, Catholics and others in various job categories.

63. Mr. SERRANO CALDERA said that while the Government of the United Kingdom clearly intended to reduce religious discrimination in Northern Ireland by legislative means, he had some concerns as to how the Government could take practical measures towards that end. For example, the Northern Ireland Constitution Act of 1973 provided that any discriminatory law passed after that date would be null and void, but he did not understand what body would declare the nullity of such laws. He also was not clear on the role which the Standing Advisory Commission on Human Rights would have to play in dealing with laws enacted after 1973 which violated the 1973 Constitution Act. He wanted to know what remedies were available in accordance with article 3 (a) of the Covenant.

64. The Fair Employment (Northern Ireland) Act of 1976 was clearly aimed at making discrimination in the workplace illegal, but he wondered what mechanisms existed to give effect to the provisions of the Act. He wished to know what role the Fair Employment Commission played, and what remedies were available to individuals who were the victims of discrimination. Finally, he wished to know whether the Fair Employment Tribunal was a special or an ordinary court.

65. Referring to the 1975 Sex Discrimination Act, he asked for information on the role of the Equal Opportunities Commission.

66. Mr. MAVROMMATIS, referring to the replies given in connection with paragraph 56 of the report, said he understood the United Kingdom's dilemma but reminded it that it had an obligation to observe the provisions of the Covenant. He did not believe, for example, that allowing the entry of the husband of a female alien student would have a serious impact on the labour market. Such a fear seemed to be based on an outdated view of the roles of men and women in the labour market. Similarly, he thought that widowers had an equal need to be with their children and should be granted entry on the same terms as widows.

67. Racial equality was a preoccupation in every country which was compounded in European countries by the arrival of people from their former colonies. It had become a serious problem in the United Kingdom. In the light of the results

achieved to date in attempting to combat racial discrimination, he felt that there was a need to reconsider the mechanisms in place.

68. Turning to paragraph 27 of the report, he asked why a defendant opting for trial by jury was not made the subject of a social inquiry. In the past, social inquiries had been mandatory for all cases going to trial by jury. He also questioned the wisdom that someone pleading guilty should be able to count on being given a lighter sentence. That might be justified if the person pleaded guilty and showed remorse, but was not right if the lighter sentence was merely a recompense for lessening the backlog of court cases.

69. Mr. LALLAH said that, while the European Court of Human Rights had determined that there was no discrimination against women under the British old age pension scheme, he still had some questions regarding the treatment of women under the social security system in the United Kingdom. He welcomed initiatives to make police officers more sensitive to the discrimination and abuse to which immigrants were subjected and hoped that such initiatives might be extended to other public officials.

The meeting rose at 1.10 p.m.